

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIONISIA NIEVES and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, Calif.

*Docket No. 96-2620; Submitted on the Record;  
Issued December 18, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has more than a one percent permanent impairment of the right shoulder.

The Board has duly reviewed the record in this case and finds that the case is not in posture for a decision.

In this case, the Office of Workers' Compensation Programs accepted appellant's September 18, 1986 right shoulder injury, and requested that her treating physician advise it when she reached the date of maximum medical improvement so that the Office could assist appellant in developing a claim for a schedule award for the right shoulder. In a medical report dated February 27, 1996, Dr. Joseph M. Grant, appellant's treating Board-certified orthopedic surgeon, stated that appellant had mild right shoulder pain and mild tenderness along her right trapezius muscle. He further noted that slight pain was reproduced upon extension and flexion. Dr. Grant stated, however, that appellant had no radiating arm pain, numbness, tingling or paresthesias of her right shoulder, and noted negative results of a neurovascular examination. In a range of motion report dated the same day, Dr. Grant noted that appellant's right shoulder had 25 degrees of internal rotation, 45 degrees of external rotation, 160 degrees of forward elevation, 20 degrees of backward elevation, 90 degrees of abduction and 20 degrees of adduction. He further noted that appellant had a 10 percent impairment based on pain and recommended a 45 percent permanent impairment of the right shoulder. In a June 4, 1996 medical report, Dr. Ellen L. Pichey, an Office medical adviser and Board-certified in family practice, reviewed Dr. Grant's report and stated that appellant had a zero percent impairment rating based on loss of motion and strength calculations.<sup>1</sup>

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<sup>1</sup> The Board notes that Dr. Pichey's findings regarding appellant's pain level, Grade 2, which rated a 25 percent sensory deficit is consistent with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a decision dated June 18, 1996, the Office awarded appellant a one percent permanent partial impairment for the right shoulder. On July 12, 1996 appellant filed a request for reconsideration which the Office, on July 25, 1996, denied.

The Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulations<sup>3</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of body members listed in the schedule. The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method for making such a determination rests in the sound discretion of the Office. The Office has adopted, and the Board has approved, the use of the A.M.A., *Guides*,<sup>4</sup> as an appropriate standard for evaluating schedule losses.<sup>5</sup>

In this case, Dr. Grant did not indicate that he relied on the A.M.A., *Guides* to reach his conclusions, and thus his opinion is of limited probative value.<sup>6</sup> Further, Dr. Pichey failed to explain how she arrived at her finding that appellant had a zero percent permanent impairment based on loss of range of motion and strength. Although Dr. Pichey stated that she used Dr. Grant's reports to arrive at her conclusions, the Board notes that an impairment rating for loss of range of motion and loss of strength based on Dr. Grant's calculations with reference to the appropriate data in the *Guides* would appear to exceed the zero percent rating as determined by Dr. Pichey.<sup>7</sup> The Board also notes that Dr. Pichey did not explain fully how she arrived at her determination, nor did she state what data she relied on in her determination. For example, Dr. Pichey did not record and then compare Dr. Grant's calculations to a referenced figure or table listed in the *Guides* to support her conclusion. The mere fact that she stated that she relied on both Dr. Grant's reports and the *Guides* in determining appellant's impairment rating is insufficient to establish that Dr. Pichey properly relied on Dr. Grant's data or that she properly relied on the procedures required for determining rates of impairment as contained in the *Guides*. Because neither Dr. Grant nor Dr. Pichey were able to support their recommendation regarding appellant's impairment rating in accordance with the A.M.A., *Guides*, the Board finds that the case must be remanded for further development.

On remand the Office should refer the case record to another consultant or an Office medical adviser for further review of Dr. Grant's report. After further development as it may find necessary, the Office should issue a *de novo* decision.

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> A.M.A., *Guides* (4th ed. 1993).

<sup>5</sup> *Kenneth E. Leone*, 46 ECAB 133 (1994).

<sup>6</sup> The Office notified Dr. Grant that he was required to use the A.M.A., *Guides* in his impairment calculation.

<sup>7</sup> *Supra* note 4.

The decisions of the Office of Workers' Compensation Programs, dated June 18 and July 25, 1996, are hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, D.C.  
December 18, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member